

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

AF/3764
\$
#28,55

In re Application of

Ping Liong Tjoa

Appln. No. : 09/319,243

Filed : June 7, 1999

For: TRAINING APPARATUS



) Art Unit: 3764

) Ex: L. Hamilton

BRIEF ON APPEAL (3 COPIES)

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TECHNOLOGY CENTER R3700

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Transmitted herewith are three (3) copies of a Brief on Appeal in the above-identified application.

1. ☐ An Oral Hearing is requested.
2. ☐ An Oral Hearing is requested on _____.
3. ☒ An extension of time for filing the Brief on Appeal
☐ is hereby requested.
☒ was requested on _____.
4. ☐ A Verified Statement under 37 CFR 1.9 and 1.27
☐ is enclosed.
☐ is of record in this application.

The fee is calculated as follows:

	Large Entity	Small Entity	Amount
Filing Brief on Appeal	\$320.00	\$160.00	\$160.00
Request for Oral Hearing	280.00	140.00	
Request for Extension of Time for Filing Brief			
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7. (x) Please charge Deposit Account No. 10-1213 in the amount of \$ 160.00. A duplicate of this sheet is enclosed.
8. (X) The Commissioner is hereby authorized to charge payment of the following fees during the pendency of this application or credit any overpayment to Deposit Account No. 10-1213. A duplicate of this sheet is enclosed.
- (X) Any patent application processing fees under 37 CFR 1.17.
- () The Issue Fee set in 37 CFR 1.18 at or before mailing of the Notice of Allowance, pursuant to 37 CFR 1.311(b).
- (X) Any filing fees under 37 CFR 1.16 for presentation of extra claims.

Respectfully submitted,



Felix J. D'Ambrosio
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February 4, 2003

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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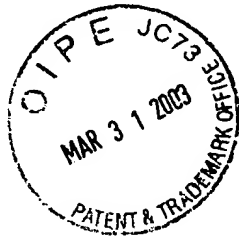
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BRIEF ON APPEAL

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Pursuant to the provisions of 37 CFR 1.192, submitted herewith is
applicant/appellant's Brief on Appeal.

REAL PARTY IN INTEREST

The inventor, Mr. Ping Liong Tjoa holds the entire right, title and interest to this
application and the invention disclosed and claimed.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and/or interferences with respect to this application
which are now pending.

STATUS OF CLAIMS

Claims 12 and 14-23 have been finally rejected as unpatentable under 35 USC
103(a) over Bosko et al, U.S. Patent No. 3,334,899.

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STATUS OF AMENDMENTS

This application is a (CPA), filed July 9, 2001.

A REQUEST FOR RECONSIDERATION was filed on November 4, 2002 to the Office Action of June 4, 2002.

A Notice of Appeal was filed on December 4, 2002.

SUMMARY OF THE INVENTION

(the page and line references are to the specification)

The invention disclosed and claimed in this continuation application relates to a training apparatus (page 1, line 3) which has an intermediate element formed as a rod and identical end elements (page 3, lines 9 and 10). Each end element has a spherical forms with a non-discontinuous spherical surface remote from the intermediate element, a turning region and a conversely concave region on its side toward the intermediate element (page 3, lines 21-29).

The dimensions of the training apparatus will depend on whether the user is an adult or a child. For the total length of the training apparatus is approximately in the range of the length of the shoulder span of the person using it (page 4, lines 1-13).

The spherical end elements fit the palms of the users hand (page 4, line 30).

Because of the spherical shape and the rotational symmetry of the intermediate element, the meridians known from traditional Chinese medicine are on the one hand activated via the palms and on the other hand, given technically correct use, optimal posture and flexibility in the shoulder and chest region are promoted (page 4, line 33 to page 5, lines 1-4).

ISSUES

A single issue is presented, namely, are claims 12 and 14-23 unpatentable under 35

USC 103(a) over Bosko et al.

GROUPING OF CLAIMS

Claim 12 is in independent form, and claims 14-23 are in dependent form, depending directly from claim 12 (claims 14, 15 and 17-23) or indirectly from claim 12 (claim 16).

ARGUMENT

CLAIM 12 CANNOT BE RENDERED UNPATENTABLE UNDER 35 USC 103(a) OVER BOSKO ET AL

Bosko et al discloses a hydro-space-balance resistive stretch exerciser. It includes two hollow spherical members 10 and 11 connected by a hollow form fitting hand bar 12. One of the hollow spherical members includes a plugged opening through which fluid is added to or removed from the hollow portions of both spherical members and the hand bar.

The exerciser of Bosko et al is in reality nothing more than a weight-lifting device (dumbbells and barbells) with a facility to increase or decrease its overall weight. With respect to Fig. 6, for example, to increase the weight of the device of Fig. 6, the user detaches the bodies 32 and 33 and either adds larger bodies or adds material to the existing bodies, such as metal shot (column 3, lines 44-48). To increase size, the user changes the handle 36 to a larger one to form a larger barbell (column 3, lines 51-54, and column 5, lines 41-42).

Dumbbells and barbells are well known exercising equipment. With dumbbells, the user employs one hand which grasps the handle 36, and with barbells, the user employs both hands which grasp the handle 36. In either case the hands of the user engage the handle not the spherical members 32 and 33. *There is no disclosure in Bosko et al which tells the user that spherical members 32 and 33 can be grasped.*

Claim 12 defines a training apparatus for *massaging the palms and promoting body bearing and motion*. It has a rod serving as an intermediate member and identical end members one at each end of the intermediate member. The end elements each have a spherical form *the diameter of which is adapted to the palm of the hand of a training person*. Joining the intermediate rod member and the identical spherical end elements are a turning region and a conversely concave region, with the *turning region making a steady transition into the conversely concave region* and the *conversely concave region making a steady transition to the intermediate rod member*. The total length of the training apparatus *is approximately in the range of the length of the shoulder span of the person using it*.

Where in Bosko et al are the structural features highlighted above? It is respectfully submitted that these features cannot be found in Bosko et al.

As the CAFC has instructed us that the applied reference under 35 USC 103 must suggest the claimed structural features. See *In re Gordon*, 221 USPQ 1125 (Fed. Cir 1984), and even more recently in *In re Oetiker*, 24 USPQ2d 1443 (Fed. Cir. 1992).

Without such a suggestion in Bosko et al of the highlighted features, these features must render claim 12 patentable.

THE DIFFERENCES IN THE FEATURES NOTED IN CLAIM 12 AND BOSKO ET AL ARE STRUCTURAL DIFFERENCES AND NOT MERELY INTENDED USE DIFFERENCES

It should be emphasized that the members 32 and 33 of Bosko et al and the end members defined in claim 12 are *not structurally the same*. The apparatus according to claim 12 and that disclosed by Bosko et al are used differently, but it is not because of any intent of the

user but because they are structurally different. Claim 12 states very specifically that the end elements are spherical and *the diameter [structure] of which is adapted to the palm of the hand of a training person*. Two brochures illustrating this feature are of record and are enclosed herewith. See, for example, the illustration marked by ①. Note the elderly individuals and how they are grasping the apparatus of the present invention with the palms of their hands at the spherical end elements. This is not possible with the apparatus disclosed in Bosko et al because the two apparatuses are structurally different. Where in Bosko et al is there even a suggestion that the spheres could be redesigned so that they could be held as in ①? Applicant sees none.

There is at least one other structural difference between Bosko et al and claim 12, and that is the total length feature. Claim 12 specifically states that *the total length of the training apparatus is approximately in the range of the length of the shoulder span of the person using it*. Dumbbells are never that wide and barbells are always wider. Bosko et al is, after all, either a dumbbell or a barbell, it is not a training device like that claimed in claim 12.

The examiner suggests that applicant has not attributed any significance to these features. In fact, applicant has. Applicant submitted a video to the examiner, which is of record, which illustrates the advantages derived from these features. Applicant has also submitted the two brochures noted above. In addition, applicant has submitted unexecuted declarations under 37 CFR 1.132 of two experts in the field of physical therapy who are testifying regarding the benefits derived from the present invention. The executed declarations are being submitted herewith. The only change between the unexecuted declaration and the executed declarations is that found in Dr. Reinauer's where he indicates that was a member of the Board and press secretary for the Study Group for Diabetology in the German state of Baden-Württemberg. This

change in no way renders the evidence presented in the declaration less probative.

These declarations speak for themselves. They demonstrate, it is respectfully submitted, that the training apparatus of the present invention is indeed a positive force in the medical field. See the section of the brochure marked with ②. The individual shown is Dr. Reinauer whose is one of the declarants. Note the observations made by Dr. Reinauer, namely: the improved mobility, increased co-ordination, enhanced posture, increased respiratory capacity and stamina, strength building, improved balance, easier relaxation, increased vitality, and less dangers of injury due to co-ordinated arm movements. these are certainly significant advantages which the present invention provides. Where can they be found in the disclosure of Bosko et al? it is respectfully submitted that they cannot.

Also of record are the documents submitted with the Preliminary Amendment filed on July 9, 2001. Copies of these are also enclosed herewith. These , too, attest to the advantages achieved with the present invention.

**CLAIMS 14-23 DEPEND FROM CLAIM 12 AND, LIKE CLAIM 12
PATENTABLY DISTINGUISH OVER BOSKO ET AL**

Claims 14-23 depend either directly (claims 14, 15 and 17-23) or indirectly (claim 16) from claim 12, and on that basis alone patentably distinguish over Bosko et al.

Claim 14, for example, further define the diameter of the conversely concave region and the turning region relative to that of the intermediate element. Claim 17, for example, further defines the dimension (radius).of the spherical surface as between a certain range, while claim 19, for example, further defines the total length feature. These specifically recited further definitions are not found, it is respectfully submitted, in Bosko et al. And, applicant can see no

basis in Bosko et al for concluding that they flow from Bosko et al.

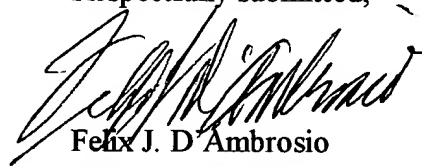
SUMMARY

Applicant has demonstrated that the present invention as claimed distinguishes structurally over the Bosko et al patent , and further that the invention provides benefits and advantages not possible with, nor conceivable with the device disclosed in Bosko et al.

Applicant has noted the structural differences of the claimed invention over Bosko et al and provided testimony of others which reinforces applicant's position that claims 12 and 14-23 are patentable over Bosko et al.

The Board is urged to find that claims 12 and 14-23 are patentable over Bosko et al.

Respectfully submitted,



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APPENDIX

12. A training apparatus for massaging the palms and for promoting body bearing and motion, comprising:

an intermediate element formed as a rod; and

identical end elements, each situated at a respective end of said intermediate element,

wherein each end element has a spherical form, the diameter of which is adapted to the palm of the hand of a training person with a non-discontinuous spherical surface remote from said intermediate element, a turning region and a conversely concave region on its side toward said intermediate element, said turning region making a steady transition into said conversely concave region, wherein said conversely concave region making a steady transition to said intermediate element, and wherein the total length of the training apparatus is approximately in the range of the length of the shoulder span of the person using it.

14. The training apparatus according to claim 12, wherein the radius of said conversely concave region is approximately equal to the radius of said non-discontinuous spherical surface.

15. The training apparatus according to claim 12, wherein said conversely concave region and said turning region form a smaller minimum diameter than the equivalent of the maximum diameter of said intermediate element.

16. The training apparatus according to claim 15, wherein said intermediate element is cylindrical over a substantial portion of its length.

17. The training apparatus according to claim 12, wherein the radius of said spherical surface is in a range of between 30mm and 75mm.

18. The training apparatus according to claim 12, wherein the minimum diameter of said conversely concave region and said turning region is in a range of between 17mm and 25 mm.

19. The training apparatus according to claim 12, wherein the total length of the training apparatus is in a range of between 200mm and 560mm.

20. The training apparatus according to claim 12, wherein the total length of the training apparatus is in the range of between 600mm to 2000mm.

21. The training apparatus according to claim 12, wherein the total length of the training apparatus is in the range of between 600mm and 1200mm.

22. The training apparatus according to claim 12, wherein the training apparatus is molded in one piece.

23. The training apparatus according to claim 12, wherein the training apparatus is made of one of: wood, plastic, metal and stone.